

REMARKS/ARGUMENTS

Favorable reconsideration of the present application is respectfully requested.

Claims 11 and 14 have been amended to respectively incorporate the subject matter of cancelled Claims 12 and 15. Cancelled Claims 13 and 16 have been rewritten in independent form as new Claims 24-25. The amended claims do not recite a "positional relationship member," and so the rejection under 35 U.S.C. §112 is believed to be moot.

Claims 11-23 were newly rejected under 35 U.S.C. §102 as being anticipated by Kobayashi '820. It is respectfully submitted, however, that the amended claims define over this reference.

Claim 11 now recites the feature of cancelled Claim 12 that a guard cover and a radiator duct extending between a radiator and the guard cover, so as to guide cooling air passing the guard cover to the radiator, are mounted to an upper rotating body via a radiator support. For example, the guide duct 29 and the guard cover 26 are mounted via the radiator support 22. Since the positional relationships for these elements is fixed by the radiator support 22 as a reference, space management amongst these elements is more easily accomplished.

Kobayashi '820 discloses a working machine wherein the swiveling frame 4 of an upper swiveling body is provided with a deck 3 on which is mounted a radiator 14.

The fourth hood space 120D includes an upper portion Sc defining an air passage for guiding cooling air drawn in through the air intake 18 to a position rearwardly of the radiator 14. Thus, ambient air drawn by suction of a cooling fan 11 through the air intake 18 into the second hood space 120B in the engine room flows easily to the third hood space 120C in which the radiator 14 is mounted, with little resistance through the air passage (inner space) in the fourth hood space 120D. (Col. 6, lines 33-42).

However there is no description in Kobayashi '820 of a radiator duct extending between the radiator 14 and the air intake 18, so as to guide cooling air passing the air intake to the radiator. Nor is there a teaching that the air intake 18 and a non-existent radiator duct

are mounted via a support for the radiator 14. Applicants note that the portion of the description of Kobayashi '820 relied upon in the Office Action for this teaching (col. 3, lines 8-15) merely describes that "the engine may be cooled relatively easily by forming the air intake and air outlet in the left and right hood spaces, without requiring a mechanism such as a radiator exhaust duct." No radiator duct extending between the radiator and the air intake so as to guide cooling air passing the air intake to the radiator is suggested by this passage. Claim 11 therefore defines over this prior art.

New Claim 24 recites the feature of cancelled Claim 13 that the canopy support and guard cover are mounted to the upper rotating body via the radiator support. This is also not taught in Kobayashi '820.

While an unnumbered canopy support is shown in Fig. 1 of Kobayashi '820, there is no description that it is mounted to the upper rotating body via the radiator support. Again, there is also no teaching that the air intake 18 is mounted via a support for the radiator 14. Applicants also note that the purported location for this teaching in Kobayashi '820, i.e., lines 48-60 of col. 1, is merely a description that disparages the prior art design wherein the canopy mount is disposed "adjacent to" the radiator – not mounted via the radiator support. No mounting of a canopy support to the upper rotating body via the radiator support is mentioned in this reference, and so Claim 24 also defines over this prior art.

Claim 14 now recites the feature of cancelled Claim 15 that a bonnet pivotally provided to cover the engine, and a side panel arranged on one lateral side at the rear part of an opening hood for covering the back side of the engine, are both mounted to the upper rotating body via a mounting column provided on the upper frame. This facilitates controlling the space "c" between the bonnet and the side panel (page 8, lines 15-22; Fig. 1). On the other hand, the rear hood portion (bonnet) 6b of Kobayashi '820 is mounted to the fixed front hood portion 6a. The front hood portion 6a is directly mounted to the deck 3.

Neither is mounted to the upper rotating body via a mounting column. Claim 14 therefore also defines over this prior art.

New Claim 25 recites the feature of cancelled Claim 16 that the bonnet and a separate muffler cover are mounted to the upper rotating body via the mounting column. This facilitates maintaining the space between the bonnet and muffler cover (paragraph bridging pp. 8-9). No muffler cover is disclosed in Kobayashi '820. The portion of Kobayashi '820 relied upon in the Office Action to teach the subject matter of Claim 16 simply describes that a muffler may be positioned within the engine hood 6 – a muffler cover is not described. Additionally, the engine hood 6 itself cannot be the “muffler cover” since Claim 25 recites that the muffler cover is “covered by said bonnet.” Claim 25 therefore also defines over this prior art.

Applicants therefore believe that the present application is in a condition for allowance and respectfully solicit an early notice of allowability.

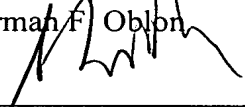
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)
RTP/rac



Robert T. Pous
Registration No. 29,099
Attorney of Record